

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

DECLARATION OF JEFFREY M. GOULD
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Jeffrey M. Gould, hereby declare:

1. I am Senior Counsel Oppenheim + Zembrak, LLP, and am admitted to practice law in the District of Columbia, among other jurisdictions. I am counsel for Plaintiffs in the above-captioned case. I have personal knowledge of all facts stated in this declaration, and if called upon as a witness, I could and would competently testify thereto.

2. I submit this declaration in support of Plaintiffs' Motion for Summary Judgment filed contemporaneously herewith.

3. Attached hereto are true and correct copies of the following exhibits:

Exhibit	Description
1	Cox Communications, Inc. Annual Financial Supplement 2014 (PX 443)
2	Audible Magic Data (PX 11)
3	Excerpts from transcript of Dr. Nick Feamster's May 29, 2019 deposition
4	MarkMonitor Case Packages (excerpts of PX 33)

5	Rebuttal Report of Dr. Nick Feamster, dated May 15, 2019
6	Excerpts from transcript of Christian Tregillis's June 24, 2019 deposition
7	Notice Data spreadsheet (PX 14)
8	Excerpts from transcript of Brent Beck's June 5, 2019 deposition
9	MarkMonitor infringement notice to Cox (PX 538)
10	Beck Declaration In Support Of Cox's Opposition To Plaintiffs' February 1, 2019 Motion To Compel (PX 362)
11	Stipulated Order to Produce Identifying Information Concerning Certain Cox Business Subscribers (ECF No. 140)
12	Rebuttal Report of Christian Tregillis, dated May 15, 2019
13	Hard drive of infringing Audio Files identified by hash values, which Plaintiffs produced to Cox (PX 39)
14	Cox email forwarding MarkMonitor infringement notice to subscriber (COX_SONY_00717187)
15	Cox email from T. Williams to J. Zabek, RE: Question for ya (PX 264)
16	Cox email from J. Zabek to S. Wilmmmer, RE: Archer Incident IR-155: Possible BitTorrent Use on Internal Network – Closed (PX 318)
17	Cox email from J. Sikes to HRD-TOC (CCI-Hampton Roads) and CCI - Abuse Corporate, RE: Termination Review – 19751123 (PX 346)
18	Cox email from J. Sikes to HRD-TOC (CCI-Hampton Roads) and CCI - Abuse Corporate, RE: Termination Review - 19991279 (PX 345)
19	Cox Communications Acceptable Use Policy (PX 175)
20	Cox Business Acceptable Use Policy (PX 178)
21	Cox Communications Acceptable Use Policy (PX 184)
22	Cox email from M. Carothers to CCI - DAB-Abuse Team, subject: DAB Abuse call meeting minutes 1/12/10 (PX 240)

23	Cox Communications, Inc.'s First Supplemental Responses to BMG Plaintiffs' First Set of Interrogatories, with May 29, 2015 Verification (PX 351)
24	Cox Communications, Inc.'s Third Supplemental Responses to BMG Plaintiffs' First Set of Interrogatories, with August 27, 2015 Verification (PX 353)
25	Summary of Infringement Notices to Cox and Cox Responses (PX 12)
26	Cox Communications Abuse Department CBS Ticket Handling Procedures (PX 164)
27	Cox Communications Abuse Department Ticket Handling Procedures (PX 165)
28	Cox Communications Abuse Department Ticket Handling Procedures (PX 167)
29	Cox Communications Customer Safety and Abuse Operations Residential Abuse Ticket Handling Procedures (PX 179)
30	Cox email from B. Beck to J. Sikes, cc: M. Carothers, J. Zabek, S. Roper, and D. Dee, RE: DMCA complaint spike? (PX 335)
31	Email produced by Cox from V. Sheckler to R. Cadenhead, cc: B. Beck, RE: notice limit (PX 328)
32	Declaration of Brent K. Beck in Support of Defendants' Opposition to BMG Plaintiffs' Motion for Partial Summary Judgment (PX 358)
33	Cox produced document entitled "State of Customer Safety 2011" (PX 197)
34	Cox email from B. Beck to J. Zabek, RE: CATS auto quarantine (PX 295)
35	Excerpts from transcript of Jason Zabek's June 25, 2019 deposition
36	Declaration of Jason Zabek in Support of Defendants' Opposition to BMG Plaintiffs Motion for Partial Summary Judgment (PX 357)
37	Cox's Residential Non-Pay Disconnect volumes by month (PX 460)
38	Cox's Second Supplemental Responses to Plaintiffs' First Set of Interrogatories (Nos. 1-12) to Defendants, with verification (PX 365)

39	Cox Ticket Data, produced by Cox (PX 19)
40	Subscriber ID Data correlating Cox subscribers' ICOMS IDs to Plaintiffs' infringement notices, produced by Cox (PX 23)
41	Cox email thread with Jason Zabek re Rightscorp notices (PX 300)
42	Excerpts from transcript of Randall Cadenhead's June 9, 2015 deposition
43	A filtered excerpt of Cox's Ticket Data (PX 19) showing infringement tickets for the Cox subscriber with ICOMS ID [REDACTED] and IP address 72.206.99.193
44	A filtered excerpt of RightsCorp notice data (PX 34) between May 13, 2013 and March 7, 2014 for the subscriber with IP address 72.206.99.193 ¹
45	A filtered excerpt of Cox's Ticket Data (PX 19) showing infringement tickets for the subscriber with ICOMS ID [REDACTED] and IP address 72.220.6.78
46	A filtered excerpt of RightsCorp notice data (PX 34) between Aug. 5, 2013 and March 6, 2014 for the subscriber with IP address 72.220.6.78
47	A filtered excerpt of Cox's Ticket Data (PX 19) showing infringement tickets for the subscriber with ICOMS ID [REDACTED] and IP address 174.67.242.185
48	A filtered excerpt of Rightscorp notice data (PX 34) between May 17, 2014 and Dec. 28, 2014 for the subscriber with IP address 174.67.242.185.
49	Cox's 2013-2014 data plan rates, produced by Cox (PX 463)
50	ICOMS Billing Data, produced by Cox (PX 471)
51	ICOMS Billing Data, produced by Cox (PX 472)
52	ICOMS Billing Data, produced by Cox (PX 473)
53	ICOMS Billing Data, produced by Cox (PX 474)

¹ Exhibits 44, 46 and 48 are each excerpts of PX 34, which is a 7 gigabyte file containing 14.8 million records and generally requiring specialized software to open. Cox produced PX 34 to Plaintiffs in discovery. If the Court would like a copy of the entire file, Plaintiffs can provide it

54	Cox email from J. Sikes to B. Beck, cc: J. Zabek, CCI - Abuse Corporate, and CCI - ATL - Data Ops - CATS, RE: CATS Suspend vs Terminate (PX 294)
55	Email from A. Thompson to HRD-TOC (CCI-Hampton Roads) and CCI - Abuse Corporate, RE: Termination Review – 19029047 (PX 347)
56	Chat log conversation with joesikesatl on G Chaos L2 (aim) (PX 303)
57	Excerpts from transcript of Clint Summers' May 8, 2019 deposition
58	Cox High Speed Internet Data Usage Assessment Mid-term Readout (PX 212)
59	Excerpts from transcript of Jorge Fuenzalida's April 29, 2019 deposition
60	Excerpts from transcript of William Basquin's May 9, 2019 deposition
61	Cox email from M. Mathews to J. Sikes, HRD-TOC (CCI-Hampton Roads), and CCI - Abuse Corporate, RE: Request for Termination - CATS Ticket 18640545 (PX 342)
62	Cox email from J. Zabek to HRD-TOC (CCI Hampton Roads) and CCI - Abuse Corporate, cc: CCI - TOC RE: CATS 7442149 (PX 277)
63	Chat log conversation with joesikesatl on G Chaos L2 (aim) (PX 305)
64	Email from J. Zabek to A. Dameri and CCI - Abuse Corporate, cc: C. Burns, RE: Customers Terminated for DMCA (PX 266)
65	Email from R. Vredenburg to M. Moy, FW: DMCA Terminations (PX 253)
66	Email from J. Zabek to A. Dameri and CCI - Abuse Corporate RE: Account (PX 245)
67	Excerpts from transcript of Marcus Delgado's July 2, 2019 deposition
72	Cox's Responses and Objections To Plaintiffs' First Set Of Requests For Admissions To Defendants (PX 370)

4. Attached hereto are true and correct copies of the following exhibits referenced in the Declaration of William H. Lehr, filed contemporaneously herewith. A number of these documents

are also included above and are listed again here for convenience in reviewing materials referenced in the Lehr Declaration:

Exhibit	Description
16	Email from J. Zabek to S. Wilmmer, RE: Archer Incident IR-155: Possible BitTorrent Use on Internal Network – Closed (PX 318)
39	Ticket Data, produced by Cox (PX 19)
50-53	ICOMS Billing Data, produced by Cox (PX 471 – PX 474)
58	Cox High Speed Internet Data Usage Assessment Mid-term Readout, p.4, 6-7 (PX 212)
59	Excerpts from transcript of Jorge Fuenzalida's April 29, 2019 deposition
60	Excerpts from transcript of William Basquin's May 9, 2019 deposition
68	Cox email describing bad debt / realization rates (PX 452)
69	Cox High Speed Internet Data Usage Assessment Appendix (PX 213)

5. Attached hereto are true and correct copies of the following documents referenced in the Declarations of Sam Bahun, Barbara Frederiksen-Cross and/or George McCabe filed contemporaneously herewith. A number of these documents are also included above and are listed again here for convenience in reviewing materials referenced in the the Bahun, Frederiksen-Cross, and McCabe Declarations:

Exhibit	Description
2	Audible Magic Data (PX 11, Plaintiffs_00286431)
4	MarkMonitor Case Packages (excerpts of PX 33, MM000306)
7	Notice Data spreadsheet (PX 14, Plaintiffs_00286280)
9	MarkMonitor infringement notice to Cox (PX 538, Plaintiffs_00100723)

13	Hard drive of infringing Audio Files identified by hash values that Plaintiffs produced to Cox (PX 39)
39	Ticket Data (PX 19)
40	Subscriber ID Data correlating Cox subscribers' ICOMS IDs to Plaintiffs' infringement notices (PX 23, COX_SONY_00515540)
50-53	ICOMS Billing Data (PX 471 – PX 474)
70	Notice Data text file (PX 13, Plaintiffs_00286430)
71	Download Data (PX 16, Plaintiffs_00286432)

6. Plaintiffs, through counsel, have reviewed the document productions by Cox, MarkMonitor and the Recording Industry Association of America (“RIAA”) in this litigation. No counter-notifications pursuant to the Digital Millennium Copyright Act, 17 U.S.C. § 512(g)(3) were identified.

7. When Cox forwards MarkMonitor’s infringement notice to subscribers, it informs subscribers that [REDACTED]


[REDACTED] A true and correct copy of one such email, produced by Cox with the beginning bates number COX_SONY_00717187, is attached hereto as Exhibit 14. Plaintiffs, through counsel, have reviewed the document productions by RIAA and MarkMonitor in this litigation. No such communications from a Cox subscriber to either RIAA or MarkMonitor were identified.

8. Plaintiffs served Requests for Admission on Cox to identify the specific works, if any, for which Cox disputes ownership. Cox refused to respond to Plaintiffs, claiming undue burden and insufficient information to determine whether any of the works in suit were registered with the U.S. Copyright Office or whether Plaintiffs are the owners or exclusive licensees of such works. Cox failed even to admit that Plaintiffs own those works where Plaintiffs are identified as the

claimant on the registration. A true and correct copy of Cox's Responses and Objections To Plaintiffs' First Set Of Requests For Admissions To Defendants (PX 370) is attached hereto as Exhibit 72.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 30, 2019 in Washington, District of Columbia.



Jeffrey M. Gould
Counsel for Plaintiffs